INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statutes and regulations involved	2
Statement	2
Specification of errors to be urged	4
Reasons for granting the writ	5
Appendix (statutes and regulations)	7

CITATIONS

Cases:	
Commissioner v. *Lafayette Life Insurance Co.*, 67 F. (2d) 209	5
Commissioner v. *Rockford Life Insurance Co.*, 67 F. (2d) 213	5
Statutes:	
Revenue Act of 1921, c. 136, 42 Stat. 227, 261:	
Sec. 243	7
Sec. 244	7
Sec. 245	7
Revenue Act of 1924, c. 234, 43 Stat. 253, 289:	
Sec. 243 (U.S.C., Title 26, Sec. 1001)	8
Sec. 244 (U.S.C., Title 26, Sec. 1003)	8
Sec. 245 (U.S.C., Title 26, Sec. 1004)	8
Revenue Act of 1926, c. 27, Sec. 245 (b), 44 Stat. 9, 47 (U.S.C.App., Title 26, Sec. 1004)	6
Revenue Act of 1928, c. 852, Sec. 203 (b), 45 Stat. 791, 844	6
Revenue Act of 1932, c. 209, Sec. 203 (b), 47 Stat. 169, 225 (U.S.C. Sup. VI, Title 26, Sec. 203 (b))	6
Miscellaneous:	
Regulations 62, Art. 686	9
Regulations 65, Art. 686	9
S.Rept. No. 665, 72d Cong., 1st sess., p. 36	6

In the Supreme Court of the United States

OCTOBER TERM, 1933

No. —

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, petitioner

v.

THE INDEPENDENT LIFE INSURANCE COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Solicitor General, on behalf of Guy T. Helvering, Commissioner of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Sixth Circuit entered in the above cause on November 10, 1933, affirming a decision of the United States Board of Tax Appeals.

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 23–48) is reported in 17 B.T.A. 757. The opinion of the Circuit Court of Appeals (R. 68–75) is not yet reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered November 10, 1933. (R. 67.) The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether it is within the constitutional power of Congress to deny to life insurance companies the right to deduct from gross income, in computing taxable net income, taxes, expenses, and depreciation with respect to real estate owned and occupied in whole or in part by them, except upon condition that they include in net income, as the rental value of the space so occupied, an amount which when added to the rents received from other tenants will provide a net income at the rate of not less than 4 percent per annum on the book value of such real estate.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved will be found in the Appendix, *infra,* pp. 7–9.

STATEMENT

The following is a summary of the facts as agreed upon by the parties and found by the Board of Tax Appeals (R. 23–26):

The respondent is a life insurance company with its home office located at Nashville, Tennessee. (R. 23.)

During the years 1923 and 1924 the respondent owned a twelve-story building in Nashville, of which it occupied about one story as its home office. It rented such portions of the remainder of the building as it could and received gross rentals of $73,620.48 and $71,289.21 during the years 1923 and 1924, respectively. (R. 23, 25, 26.)

In 1923 the taxes, expenses, and depreciation with respect to the building aggregated $70,005.18, and the book value of the building was $460,000. (R. 25.) For the year 1924 the taxes, expenses, and depreciation amounted to $85,918.97, and the book value of the building was $494,257.97. (R. 26.) In computing its taxable net income for those years the respondent deducted from gross income the taxes, expenses, and depreciation with respect to the building, but failed to include in gross income the rental value of the space occupied by it, as required by Section 245 (b) of the Revenue Acts of 1921 and 1924. The Commissioner determined that the rental value of such space should have been returned as a part of gross income and on January 25, 1927, mailed to the respondent a notice of proposed deficiency assessments for the years 1923 and 1924 in the amounts of $298.97 and $1,115.65, respectively. (R. 23, 24.) The method by which these deficiencies were computed is shown on pages 25 and 26 of the record.

The Board of Tax Appeals found that the computation of the Commissioner was correct under the law (R. 32), but held that Section 245 (b) of the Revenue Acts of 1921 and 1924 was unconsti-

tutional, and entered an order determining overpayments of $112.86 for 1923 and $226.79 for 1924. (R. 49.) Three members dissented on the ground that the Board is without authority to declare an Act of Congress unconstitutional.

On December 14, 1932, the Circuit Court of Appeals certified to this Court questions regarding the constitutionality of Section 245 (b) and the right of the respondent to challenge the validity of that section. (R. 63–66.) On February 20, 1933, the certificate was dismissed. 288 U.S. 592. (R. 66–67.) Thereafter the Circuit Court of Appeals, one judge dissenting, held that the statute was invalid and that the respondent was not estopped to question its validity.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that Section 245 (b) of the Revenue Acts of 1921 and 1924 is invalid.

2. In holding that Section 245 (b) of the Revenue Acts of 1921 and 1924 imposes a direct tax upon real estate.

3. In holding that Congress is without power to limit deductions to those expenses connected with the earning of taxable income.

4. In holding that the tax imposed upon life insurance companies by the Revenue Acts of 1921 and 1924 is not a special excise tax.

5. In holding that the respondent is not estopped to question the validity of Section 245 (b) of the Revenue Acts of 1921 and 1924.

6. In failing to hold that in any event the deductions taken by the respondent under Section 245 (a) (6) and (7) of the Revenue Acts of 1921 and 1924 should be adjusted to give effect, in so far as possible, to the manifest purpose of Congress to permit such deductions only upon the conditions and to the extent specified in subdivision (b) of that section.

7. In affirming the decision of the Board of Tax Appeals.

REASONS FOR GRANTING THE WRIT

1. The decision below is in direct conflict with the decisions of the Circuit Court of Appeals for the Seventh Circuit in *Commissioner* v. *Lafayette Life Insurance Co.*, 67 F. (2d) 209, and *Commissioner* v. *Rockford Life Insurance Co.*, 67 F. (2d) 213.

2. The court below has held unconstitutional an important provision of the Federal revenue laws. Section 245 (b) of the Revenue Acts of 1921 and 1924 (*infra*, p. 8) is an integral part of the special plan devised by Congress for the taxation of life insurance companies. Such companies are taxed only on their investment income as distinguished from income derived from underwriting activities, and are consequently permitted to deduct from gross income only such expenses as are fairly chargeable against investment income. Subdivision (b) of Section 245 was designed to carry out this plan by limiting deductions with respect to real estate to expenses relating to that part of the

company's real estate which is held as an investment. The decision below holds in effect that it is not within the power of Congress to correlate deductions with taxable income in this manner.

3. The question presented is one of general importance, affecting as it does all life insurance companies which maintain offices in their own buildings. The Revenue Acts of 1926 and 1928 contain provisions identical with Section 245 (b) of the 1921 and 1924 Acts.[1] Numerous claims for refund have been filed following the decision of the Board of Tax Appeals in the instant case, and several cases involving the question are pending in the courts. It is important that the conflict of authority be resolved for the guidance of the courts and of the officers charged with the administration of the law.

Wherefore, it is respectfully submitted that this petition for a writ of certiorari should be granted.

J. CRAWFORD BIGGS,
Solicitor General.

DECEMBER 1933.

---

[1] See Section 245 (b) of the Revenue Act of 1926, c. 27, 44 Stat. 9, 47; Section 203 (b) of the Revenue Act of 1928, c. 852, 45 Stat. 791, 844.

In Section 203 (b) of the Revenue Act of 1932, c. 209, 47 Stat. 169, 225, the law was changed to limit the deduction to "an amount which bears the same ratio to such deduction (computed without regard to this subsection) as the rental value of the space not so occupied bears to the rental value of the entire property." This change resulted from the decision of the Board of Tax Appeals in the instant case, but was made "without regard to the legality of the present provisions." See S.Rep. No. 665, 72d Cong., 1st Sess., p. 36.

APPENDIX

STATUTES AND REGULATIONS INVOLVED

The Revenue Act of 1921, c. 136, 42 Stat. 227, 261, provides in part:

> SEC. 243. That in lieu of the taxes imposed by sections 230 and 1000 and by Title III, there shall be levied, collected, and paid for the calendar year 1921 and for each taxable year thereafter upon the net income of every life insurance company a tax as follows:
>
> (1) In the case of a domestic life insurance company, the same percentage of its net income as is imposed upon other corporations by section 230;
>
> * * * * *
>
> SEC. 244. (a) That in the case of a life insurance company the term "gross income" means the gross amount of income received during the taxable year from interest, dividends, and rents.
>
> * * * * *
>
> SEC. 245. (a) That in the case of a life insurance company the term "net income" means the gross income less—
>
> * * * * *
>
> (6) Taxes and other expenses paid during the taxable year exclusively upon or with respect to the real estate owned by the company, not including taxes assessed against local benefits of a kind tending to increase the value of the property assessed, and not

including any amount paid out for new buildings, or for permanent improvements or betterments made to increase the value of any property. The deduction allowed by this paragraph shall be allowed in the case of taxes imposed upon a shareholder or member of a company upon his interest as shareholder or member, which are paid by the company without reimbursement from the shareholder or member, but in such cases no deduction shall be allowed the shareholder or member for the amount of such taxes;

(7) A reasonable allowance for the exhaustion, wear and tear of property, including a reasonable allowance for obsolescence. In the case of property acquired before March 1, 1913, this deduction shall be computed upon the basis of its fair market price or value as of March 1, 1913;

* * * * *

(b) No deduction shall be made under paragraphs (6) and (7) of subdivision (a) on account of any real estate owned and occupied in whole or in part by a life insurance company unless there is included in the return of gross income the rental value of the space so occupied. Such rental value shall be not less than a sum which in addition to any rents received from other tenants shall provide a net income (after deducting taxes, depreciation, and all other expenses) at the rate of 4 per centum per annum of the book value at the end of the taxable year of the real estate so owned or occupied.

* * * * *

The pertinent provisions of Sections 243 (U.S.C., Title 26, Sec. 1001), 244 (U.S.C., Title 26, Sec. 1003), and 245 (U.S.C., Title 26, Sec. 1004) of the Revenue Act of 1924, c. 234, 43 Stat. 253, 289,

are substantially identical with the provisions quoted above.

Article 686 of Treasury Regulations 62 (promulgated under the Revenue Act of 1921) provides:

> ART. 686. *Home office properties.*—No deduction shall be made for any taxes, expenses, or depreciation on account of any real estate owned and occupied in whole or in part by a life-insurance company unless there is included in the return of gross income the rental value of the space so occupied. Such rental value shall not be less than a sum which in addition to any rents received from other tenants shall provide a net income (after deducting taxes, depreciation, and other expenses) at the rate of 4 per cent per annum of the book value at the end of the taxable year of the real estate so owned and occupied. For example, if the book value of a parcel of real estate owned and occupied in whole or in part by the company is $1,000,000, the rents received from other tenants $30,000, taxes and expenses $40,000, and depreciation $20,000, the company would have to include in its gross income a sum not less than $70,000 ($40,000 taxes and expenses, plus $20,000 depreciation, minus $30,000 rents from tenants, plus 4 per cent of $1,000,000) as the rental value of the space occupied by it in order to avail itself of the deductions of $40,000 and $20,000. In any case the rents received from other tenants must be included in gross income.

Article 686 of Regulations 65, promulgated under the Revenue Act of 1924, is substantially the same as that set forth above.

GOVERNMENT PRINTING OFFICE: 1933